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DEC 03 2004

OFFICE OF PETITIONS

In re Application of	:	
Hugh J. Pasika et al.	:	
Application No. 09/724,910	:	DECISION ON PETITION
Filed: November 28, 2000	:	UNDER 37 C.F.R. §1.10(C)
Attorney Docket No. 7414.0025	:	
Title: METHODS, SYSTEMS, AND	:	
ARTICLES OF MANUFACTURE FOR	:	
EVALUATING BIOLOGICAL DATA	:	

Background

This is a decision on the petition under 37 C.F.R. §1.10(c), submitted on October 21, 2004, requesting that the amendment submitted in response to the non-final Office Action of March 9, 2004 be accorded a filing date of September 9, 2004.

On March 9, 2004, the Office mailed a non-final Office Action to the Applicant, setting a shortened statutory period for reply of 3 months. On September 10, 2004, an amendment was received, along with a 3-month extension of time. The Office of Initial Patent Examination assigned the amendment a filing date of September 10, 2004.

On October 21, 2004, applicants filed the present petition. Petitioners have included a copy of the Express Mail Label having a number of EV533070042US. Applicants request that the amendment be accorded a filing date of September 9, 2004.

The relevant section of the CFR

37 C.F.R. §1.10 sets forth, in part:

(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

Analysis

The electronic record has been reviewed. The amendment has an electronic date of "09-10-2004," and the scanned image bears a stamp from the Office of Initial Patent Examination (OIPE) dated "SEP 10 2004." It is further noted that the final page of the amendment contains the Express Mail label EV533070042US.

Regarding the Express Mail label number EV533070042US that Petitioner has provided with the instant petition, it is noted that the label contains a "date-in" of September 9, 2004.

CONCLUSION

Although the amendment received a filing date of September 10, 2004, the evidence is convincing that the amendment was filed on September 9, 2004, and the incorrect filing date was subsequently assigned to this amendment.

Accordingly, the petition is **GRANTED**.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date for the amendment of September 9, 2004.

The application file is being returned to the Office of Initial Patent Examination for further processing so that Office records can be updated to reflect that the amendment was filed on September 9, 2004.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence unless a Change of Correspondence Address Form (PTO/SB/122) is submitted for the above-identified application. A blank Change of Correspondence Address Form (PTO/SB/122) may be found at <http://www.uspto.gov/web/forms/sb0122.pdf>.

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.



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